
SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair
2015 - 2016 Regular

Bill No:	AB 2393		
Author:	Campos		
Version:	June 9, 2016	Hearing Date:	June 15, 2016
Urgency:	No	Fiscal:	No
Consultant:	Lenin DelCastillo		

Subject: School employees: sick leave: parental leave

SUMMARY

This bill requires K-14 classified school employees and community college faculty on maternity or paternity leave to receive differential pay for the 12 weeks of unpaid and protected family and medical leave, and makes clarifying changes the statutory provisions regarding differential pay for certificated employees.

BACKGROUND

Existing law:

- 1) Provides differential pay to certificated employees for illness or accident. Specifically, it provides that, during each school year, when a person employed in a position requiring certification qualifications has exhausted all available sick leave, including all accumulated sick leave, and continues to be absent from his or her duties on maternity leave or paternity leave for a period of up to twelve school weeks, whether or not the absence arises out of or in the course of the employment of the employee, the amount deducted from the salary due him or her for any of the twelve weeks in which the absence occurs shall not exceed the sum that is actually paid a substitute employee employed to fill his or her position during his or her absence or, if no substitute employee was employed, the amount that would have been paid to the substitute had he or she been employed. Requires the school district to make every reasonable effort to secure the services of a substitute employee. Specifies that the 12-week period shall be reduced by any period of sick leave, including accumulated sick leave, taken during a period of maternity or paternity leave, as specified. Specifies that an employee shall not be provided more than one 12-week period per maternity leave or paternity leave. Provides that if a school year terminates before the five-month period is exhausted, the employee may take the balance of the 12-week period in a subsequent school year. (Education Code § 44977.5)
- 2) Requires that any employee has the right to use sick leave and to obtain differential pay for absences necessitated by pregnancy, miscarriage, childbirth, and recovery. (Education Code § 44978)

ANALYSIS

This bill conforms the provisions of existing law that provide differential pay to certificated school employees to classified employees and community college faculty. Specifically, this bill:

- 1) Provides that a certificated employee may use his or her sick leave for up to 12 weeks for purposes of parental leave during each school year, and makes other conforming changes, as specified. Provides that if a school district maintains a rule that credits a certificated employee with no less than 100 working days of sick leave paid at no less than 50 percent of his or her regular salary, when he or she has exhausted all available sick leave, including all accumulated sick leave, and continues to be absent from his or her duties on account of parental leave, that person shall be compensated at not less than 50 percent of his or her regular salary for a period of up to 12 weeks for parental leave.
- 2) Provides that nothing in the section shall be construed as requiring a certificated employee to use his or her sick leave for the purposes of parental leave as a condition of retaining his or her rights to unpaid parental leave, as specified. Provides that if a certificated employee elects to receive the differential pay benefit, his or her right to unpaid parental leave shall be reduced by the amount of time the employee receives the differential pay benefit.
- 3) Provides that a classified employee may use his or her sick leave for up to 12 weeks for purposes of parental leave during each school year.
- 4) Specifies that when a classified employee or community college instructor has exhausted all available sick leave, including all accumulated sick leave, and continues to be absent from his or her duties on account of parental leave the amount deducted from the salary due him or her for any of the additional 12 weeks in which the absence occurs shall not exceed the sum that is actually paid a substitute or temporary employee employed to fill his or her position during his or her absence.
- 5) Specifies that if a school or community college district that maintains a rule that credits a classified employee or community college instructor with no less than 100 days of sick leave paid at no less than 50% of the employee's regular salary, an employee on parental leave who has exhausted all available sick leave, including all accumulated sick leave, and continues to be absent shall be compensated at no less than 50% of his or her regular salary, as specified.
- 6) Specifies that the 12-week period shall be reduced by any period of sick leave, including accumulated sick leave, taken during a period of parental leave.
- 7) Specifies an employee shall not be provided more than one 12-week period for paid parental leave during any 12-month period.

- 8) Specifies that these provisions are applicable whether or not the absence from duty is for a leave of absence granted by the governing board of the school or community college district.
- 9) Provides that nothing in the section shall be construed as requiring a classified employee or community college instructor to use his or her sick leave for the purposes of parental leave as a condition of retaining his or her rights to unpaid parental leave, as specified. Provides that if the employee elects to receive the differential pay benefit, his or her right to unpaid parental leave shall be reduced by the amount of time the employee receives the differential pay benefit.
- 10) Specifies that nothing in these provisions shall be construed to diminish the obligation of a public school employer to comply with any collective bargaining agreement that provides greater parental leave rights to employees than the rights established by this bill.
- 11) Defines "parental leave" as leave for reason of the birth of a child of the employee, or the placement of a child with an employee in connection with the adoption or foster care of the child by the employee.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author's office, "classified employees and community college faculty who are new mothers and fathers are only entitled to 12 weeks of unpaid parental leave under the California Family Rights Act (CFRA). Most classified employees are not covered by State Disability Insurance (SDI) and do not receive paid parental leave under that program. In addition, classified employees are the lowest paid employees working in our schools and are denied paid parental leave while others are not. Paid parental leave helps keep people in the workforce after they have children."

This bill would provide classified school employees and community college faculty with the same paid parental leave rights as certificated employees.

- 2) ***Pregnancy disability leave.*** Existing law provides that it is unlawful to refuse to allow a female employee disabled by pregnancy, childbirth, or a related medical condition to take leave not to exceed four months. The employee is entitled to use vacation leave during this time. Once the vacation time is exhausted, the employee can receive differential pay for the remaining time, for up to five months.
- 3) ***Protected leave.*** Existing law also prohibits, except under certain circumstances, the refusal to grant a request by any employee with a certain amount of service to take up to a total of 12 workweeks in a 12 month period for family care and medical leave. The employer is required to provide the employee a guarantee of employment in the same or comparable position upon the termination of the leave. The law specifies that this protected leave is separate and distinct from the pregnancy disability leave. Once an employee is cleared to return to work by a physician, the employee may take this protected leave.

The federal Family Medical Leave Act (FMLA) and the California Family Rights Act (CFRA) provide certain employees up to 12 weeks of unpaid, job-protected leave a year for the purpose of bonding with a child, care for a parent, spouse, or child with a serious health condition, or due to an employee's own serious health condition, and requires group health benefits to be maintained during the leave as if employees continued to work instead of taking leave. But there is no pay associated with the FMLA and CFRA, other than what the employee has earned in other accrued leaves that may apply. The FMLA and CFRA are only employment protected leaves.

- 4) ***Paid Family Leave (PFL).*** The PFL program extends disability compensation to individuals (male or female) who take time off work to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a new child, or a child in connection with adoption or foster care placement. The PFL program is a component of the State Disability Insurance (SDI) program and workers covered by the SDI program are also covered for this benefit. The maximum benefit is six times the weekly benefit amount, with no more than six weeks of PFL benefits paid within any 12-month period. Employees may only be eligible for the PFL program if they are covered by the SDI program through a negotiated agreement with the State of California. If an employee does not pay into the SDI program, he or she would not be eligible to receive disability compensation under PFL. In this scenario and assuming the employee is on leave for bonding time, the employee would need to use vacation time, sick leave, or personal necessity to receive compensation or elect to take leave without pay.
- 5) ***Previous legislation.*** AB 375 (Campos, Chapter 400, Statutes of 2015) expanded the instances in which differential pay is provided to certificated employees for purposes of maternity and paternity leave to include the 12 workweek protected leave.

SUPPORT

American Federation of State, County and Municipal Employees
 California Federation of Teachers
 California Labor Federation
 California Professional Firefighters
 California School Employees Association
 California Teachers Association
 Courage Campaign
 Faculty Association of California Community Colleges
 Family Coalition
 First 5 California
 LIUNA Locals 777
 Moreland Teachers Association
 National Council of Jewish Women-CA
 Oak Grove Educators Association
 Saratoga Teacher's Association
 Service Employees International Union

OPPOSITION

Association of California School Administrators
California School Boards Association
Orange County Department of Education
San Diego Unified School District

-- END --